

wherein said neutral lipid interacts with CETP and not cholesteryl esterase.

REMARKS

The present invention is directed to an assay for determining the activity of an enzyme.

Applicant wishes to bring to the Examiner's attention related pending application Serial Numbers 08/496,806; 08/543,117 and 09/005,875. *pending*

C *ABN*
FWC
08/932,517 pending

According to one aspect of the present invention, there is provided a method of measuring the activity of CETP. CETP acts as a type of "shuttle", transferring cholesteryl ester from HDL (HDL protects against heart disease) to LDL or VLDL (which is associated with increased risk of heart disease). It is known that high CETP activity is associated with accelerated movement of cholesteryl ester from HDL to LDL. The assay of this invention measures the movement of cholesteryl ester from HDL to LDL without requiring exogenous lipoproteins to accept the transferred cholesteryl ester.

The claims have been rejected under 35 USC 112, second paragraph for indefiniteness. The Examiner has indicated the claims were not in condition for examination making a complete and proper search impossible. The Examiner's comments have been carefully considered and, without acquiescing in the rejection but

in a sincere effort to expedite prosecution, Applicant has now rewritten claims 1-11, as new claims 12-22 to increase specificity of language. Claims 12-22 are fully supported throughout the specification and in the claims they replace. More particularly, claims 17-18, find support at page 5 of the specification. Claims 19-20 are supported at page 6 and claims 21-22 find support at pages 12 and 13 of the instant disclosure. It is believed no new matter has been added by the present amendments.

No estoppel has been created by the present amendments. Mannesmann v. Engineered Metal, 230 USPQ 45 (Fed. Cir. 1986) ("In cases where a patentee's amendments were not required in response to an examiner's rejection, or critical to the allowance of the claims, no estoppel has been found,") citing Great Northern v. Davis Core, 228 USPQ 356 (Fed. Cir. 1986) and Datascope v. SMEC, 227 USPQ 838 (Fed. Cir. 1985). See also Insta-Foam v. Universal Form, 15 USPQ2d 1295 (Fed. Cir. 1990).

An Information Disclosure Statement and Form PTO 1449 are submitted herewith for the Examiner's consideration. Return of an initialed copy of Form PTO 1449 is requested.

Favorable consideration of this application is respectfully requested.

Respectfully submitted,

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I hereby certify that this correspondence is being deposited with the United States Postal Services as first class mail in an envelope addressed to Assistant Commissioner for Patents Washington, D.C. 20231 on December 29, 1998.

By Carmella A. O'Gorman

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